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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,791	03/06/2002	Ercz Roc	82381	6684
20529	7590	10/20/2006	EXAMINER	
NATH & ASSOCIATES 112 South West Street Alexandria, VA 22314			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/090,791

Applicant(s)

ROE ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 1-21 remain presented for examination.
2. The applicant should always use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for “the” and “said” within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
3. **Claims 1-15 and 18-21 are rejected under 35 U.S.C 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear since claim 1 (lines 5-7), and all other in claims 2-15 and 18-21 such as, but not limited to, claim 13 and claim 21, is indefinite since the claims appears incomplete with the absence of “an” after “carry” in line 6 of claim 1 and the like for the other claims. This issue was raised in examiner’s prior Office Action but unaddressed by the applicant in his 31 July 2006 response.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

5. **Claims 1-21 rejected under 35 U.S.C. 102 (e)** as being anticipated by Giorgetta et al. (United States Patent Number: US 6,775,799 B1).

6. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant’s attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

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7. The rejection, and grounds for rejection, under 35 U.S.C. 102(e) as presented in examiner's prior Office Action mailed 26 April 2006, are hereby maintained and incorporated in this Office Action by reference.

8. The applicant argued in his 31 July 2006 response by stating in substance that:

a) the Giorgetta reference does not describe or suggest creating or using at least one service flow formed from service packets combinable/multiplexable with an information Ethernet packet flow. However, neither do the claims with these wordings. That is, the claims do not recite creating or using at least one service flow formed from service packets combinable/multiplexable with an information Ethernet packet flow. But, Giorgetta did teach utilizing a combined flow (e.g., see figure 6 (208 and 216) and col. 10 (line 7-et seq.)) composed from an information flow (e.g., see figure 6 (202)) and one or more service flows (e.g., see figure 6 (205b)) formed from service packets (e.g., see col. 8 (line 64-et seq.));

b) Giorgetta neither describes producing service packets, nor inserts any indication of a service function in such service packets. Therefore, Giorgetta cannot anticipate the present invention as originally claimed. However, Giorgetta described producing service packets, or inserted an indication of a service function in such service packets per 6 (205b) formed from service packets (e.g., see col. 8 (line 64-et seq.));

c) Giorgetta does not produce any packet flow (service flow) which would be combined/multiplexed with packets of the Ethernet traffic (information flow). However, neither do the claims with these wordings. That is, the claims do not recite creating or using at least one service flow formed from service packets combinable/multiplexable with an information Ethernet packet flow. But, Giorgetta did teach utilizing a combined flow (e.g., see figure 6 (208 and 216) and col. 10 (line 7-et seq.)) composed from said information flow (e.g., see figure 6 (202)) and one or more service flows (e.g., see figure 6 (205b)) formed from service packets (e.g., see col. 8 (line 64-et seq.));

d) in Giorgetta, no additional/separate service packet flow is created. However, Giorgetta described producing service packets, or inserted an indication of a service function in such service packets per 6 (205b) formed from service packets (e.g., see col. 8 (line 64-et seq.));

e) since Giorgetta does not describe service packet flows, he cannot describe such interleaving. However, Giorgetta described producing service packets, and/or inserted an indication of a service function in such service packets per 6 (205b) formed from service packets (e.g., see col. 8 (line 64-et seq.));

f) Giorgetta neither describes nor suggest providing any signaling/service packet flow at the Ethernet layer, and, consequently, does not and cannot propose interleaving/combining such a service packet flow with any of the mentioned informational flows. However, the claims do not recite providing any signaling/service packet flow at the Ethernet layer. The claims recite performing one or more signaling functions at an Ethernet level and/or that the signaling channel are at the Ethernet level. It is the channel's that are at the Ethernet level. As covered in Giorgetta's Abstract, a channel was formed by a combination of information flow and service flow where the channel was at Ethernet level or other disclosed link level(s);

g) per claim 2, Giorgetta, does not describe/suggest providing operating points between any network domain and an Ethernet network (device), and definitely the cited figures/abstract do not describe the specific equipment of such operating points, as described in Claim 2. However, as

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indicated in examiner's prior Office Action, Giorgetta taught a method according to claim 1, for providing the signaling channel at the level of Ethernet between a first and a second operating points in a network domain (e.g., see figure 1 and note there are many operating points among Internet and SONET), the method comprising steps of: arranging at the first operating point a source element (e.g., see figure 1 and/or figure 3) capable of receiving the information flow from a first Ethernet device (e.g., see Abstract), arranging at the second operating point a sink element capable of transmitting the information flow to a second Ethernet device (e.g., see Abstract and figure 1 and/or figure 3), producing at the source element the service packets forming said one or more service flows (e.g., see figure 6) at the source element, merging said one or more service flows with the information flow (e.g., see figure 6 (216)), thereby obtaining the combined flow with the signaling channel (e.g., see figure 6 (218)), transmitting data comprised in the combined flow via the network domain from the source element to the sink element (e.g., see figure 6 (210)), at the sink element, extracting the service packets of said one or more service flows from said combined flow and processing said service packets, thereby performing said one or more signaling functions (e.g., see figure 1 and/or figure 3, and Abstract, and figure 6);

h) per claim 3, the Giorgetta reference might describe producing any succession of binary based on monitoring SDH/SONET information stream (the paragraph bridging col. 9 and col. 10 of Giorgetta). However, no service/signaling packets are formed by Giorgetta from that binary information; that information is used for modifying the same information flow. However, as indicated in examiner's prior Office Action, Giorgetta taught the method according to claim 2, wherein the step of producing the service packets forming said one or more service flows is performed at the source element based on at least one of the following two operations: monitoring the information flow and monitoring external instructions per the Abstract "monitoring" and as enumerated in col. 10 (lines 1-6)).

i) Giorgetta does not disclose or suggest the limitations of claims 11 and 12. However, Giorgetta taught the method according to claim 1, comprising indication of a particular signaling function in the header of a service packet of said service packets, and providing data on said particular signaling function in the data field of the service packet; wherein said one or more of the signaling functions are selected from the following non-exhaustive list: performance monitoring functions including at least one Tandem Connection function; one way and round trip delay measurement function; far end status function, connection integrity check function, buffer fill check function, function for enabling congestion indication and rate control per col. 10 (lines 1-6) as among trace section message errors, synchronization errors, frame alignment errors, byte alignment errors, B1 and B2 bit errors, bit error rate (BER) calculations, Alarm Indication Signal (AIS) errors, and Remote Error Indicator (REI) errors.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

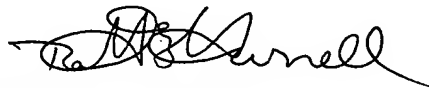
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9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142